

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM No. M-6998 of 2015 (O&M)

Date of Decision: 26.03.2015

Shingara Singh

--Petitioner

Versus

State of Punjab & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Kushaldeep S. Sandhu, Advocate for the petitioner.

TEJINDER SINGH DHINDSA.J

The instant petition filed under Section 482 Cr.P.C is directed against the order dated 26.11.2014, passed by the learned Additional Sessions Judge, Ludhiana vide which the order dated 2.7.2014, passed by J.M.I.C, Ludhiana summoning respondents no.2 to 4 as additional accused in case F.I.R No.161 dated 1.7.2011 under sections 323, 324, 506, 148, 149, 34 I.P.C, registered at Police Station Division No.5, Civil Lines, Ludhiana, has been set aside.

Learned counsel for the petitioner would argue that the petitioner/complainant Shingara Singh had at the first opportunity available, named the private respondents during his statement recorded before the court and accordingly the Trial Court had rightly issued the summoning order under Section 319 Cr.P.C. It is argued that the revisional court has proceeded erroneously while passing the impugned order has analyzed the evidence to the extent of satisfying itself as to whether it was sufficient for convicting the summoned accused/private respondents and such course of action was contrary to settled law. It is further contended that the impugned order cannot sustain as the statement of the complainant/petitioner herein

could not have been rejected only on the basis that he had not attributed specific injuries to the private respondents.

Having heard learned counsel for the petitioner at length and having perused the pleadings on record, I am of the considered view that no ground for interference is made out.

In the first instance, it may be noticed that the J.M.I.C., Ludhiana while passing the order dated 2.7.2014 at Annexure P-2 while summoning the private respondents herein as additional accused had been alive to the settled principles governing exercise of power under section 319 Cr.P.C and had observed in the order itself that such power which is conferred on the court should be used very sparingly and only if compelling reasons exist for taking cognizance only then a person can be added as additional accused but thereafter has proceeded to allow the application under section 319 Cr.P.C in the light of the following observations:-

“After perusing, the record, it has appeared that in the application moved before the police and also in his statement made before the police under section 161 Cr.P.C, complainant has named five persons namely Kala, Lakha, Mota, Billa and one unknown person, responsible for the commission of offence in question and has alleged that they had attacked him but in the present FIR only two persons have been booked by the police i.e. Lakhwinder Singh and Kuldeep Singh and about rest of the three persons, the case file is silent and as such, this court is satisfied that there are sufficient grounds to prosecute the above mentioned persons in the present case as additional accused because mandate of section 319 Cr.P.C....”

The entire discussion while summoning the additional accused is bereft of any reasoning of the nature of evidence brought on record which

could be construed as much stronger evidence to show more than a prima facie case and mere probability of the complicity of the private respondents herein in the alleged occurrence. The order has been passed in a routine and mechanical fashion.

The scope and ambit of the power of the Court under Section 319 of the Code of Criminal Procedure came up for consideration before the Hon'ble Supreme Court of India in *Sarojben Ashwinkumar Shah Etc. v. State of Gujarat and others, 2011(3) RCR (CrL) 852.* After having considered a number of previous judgments rendered by the Court, the legal position was culled out in relation to the extent of power to be exercised under Section 319 of the Code of Criminal Procedure and it was held that the power conferred upon the Court, even though discretionary, but is not to be exercised in routine manner and rather has to be used very sparingly and only if evidence has come on record which sufficiently establishes that the other person sought to be summoned as an additional accused has committed the offence. It was further held that a mere doubt about involvement of another person on the basis of evidence led before the Court would not be sufficient for exercise of power under Section 319 of the Code of Criminal Procedure. The observations of Hon'ble the Apex Court in *Sarojben Ashwinkumar Shah Etc. (supra)* were in the following terms:

“The power to proceed against any person, not being the accused before the court, must be exercised only where there appears during inquiry or trial sufficient evidence indicating his involvement in the offence as an accused and not otherwise. The word 'evidence' in Section 319 contemplates the evidence of witnesses given in court in the inquiry or trial. The court cannot add persons as accused on the basis of materials available in the charge-sheet or the case diary but must be

based on the evidence adduced before it. In other words, the court must be satisfied that a case for addition of persons as accused, not being the accused before it, has been made out on the additional evidence let in before it.

The power conferred upon the court is although discretionary but is not to be exercised in a routine manner. In a sense, it is an extraordinary power which should be used very sparingly and only if evidence has come on record which sufficiently establishes that the other person has committed an offence. A mere doubt about involvement of the other person on the basis of the evidence let in before the court is not enough. The Court must also be satisfied that circumstances justify and warrant that other person be tried with the already arraigned accused.”

Adverting back to the facts of the present case, it was gone uncontroverted that in relation to the alleged occurrence dated 30.6.2011, in the statement of complainant/petitioner Shingara Singh recorded under Section 161 Cr.P.C the private respondents herein were never named. Their names, as such, did not even figure in the F.I.R. The petitioner had also not moved any application to the higher police officials so as to implicate the private respondents herein in the alleged occurrence of assault and causing injuries. It is only after a period of approximately 3 years and while recording of statement as PW-3 that the petitioner on 28.3.2014 has named the private respondents herein and made an attempt to implicate them. Even in such statement no specific injury/role has been attributed to the private respondents.

The impugned order is found to be based on cogent and valid reasoning. Such reasoning is in line with the dictum laid down by the Hon'ble Supreme Court in ***Sarojben Ashwinkumar Shah's case*** (supra) as regards exercise of power under section 319 Cr.P.C.

No ground for interference is made out. The instant petition is, accordingly, dismissed.

Petition dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

March 26, 2015

lucky

Whether to be referred to Reporter? Yes.